



Malawi

Country Reports on Human Rights Practices - [2003](#)

Released by the Bureau of Democracy, Human Rights, and Labor
February 25, 2004

President Bakili Muluzi of the United Democratic Front (UDF) party led the Republic of Malawi, which in 1999 held its second democratic multi-party presidential and parliamentary elections since independence in 1964. Independent observers concluded that the elections were free and substantially fair; however, there was limited opposition access to media, problems in voter registration, and the opposition lost appeals of the results in the courts. The 10 parliamentary by-elections held since 1999 have been marred by increasing violence, allegations of vote fraud, and contested results. Constitutional power was shared between a popularly elected president and the 193-member National Assembly. The UDF had 93 seats in the National Assembly; the Malawi Congress Party (MCP) had 59 seats; Alliance for Democracy (AFORD) had 29 seats; there were 7 independent members; and 6 seats were vacant. The Government generally respected the constitutional provisions for an independent judiciary; however, the judicial system was inefficient and lacked resources.

The National Police, headed by the Inspector General of Police under the Ministry of Home Affairs, are responsible for internal security. The police occasionally called on the army for support. While the civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted independently of government authority. Some members of the security forces committed serious human rights abuses.

The country was very poor, with a narrow economic base characterized by a small and highly concentrated industrial sector, low levels of foreign and domestic investment, and few mineral resources. The economy was largely market-based; however, parastatal organizations dominated many sectors. The population was approximately 10.5 million, and agriculture dominated the economy, employing more than 80 percent of the labor force. The Government continued to move forward with its multisector privatization program and endorsed private sector participation in infrastructure. The economy grew by approximately 3.4 percent during the year; however, wealth remained highly concentrated in a small elite. Annual per capita income was approximately \$180.

The Government generally respected the human rights of its citizens; however, there were serious problems in several areas. Police use of excessive force or negligence resulted in deaths of some detainees while in police custody. The police continued to beat and otherwise abuse detainees and to use excessive force in handling criminal suspects. Prison conditions remained harsh and life threatening and resulted in a large number of deaths. Arbitrary arrest and detention occurred, and lengthy pretrial detention was a serious problem. Security forces at times infringed on some privacy rights. The Government generally respected freedom of speech and the press; however, there were some exceptions. Limited self-censorship existed. At times police used force against demonstrators. Violence against women was common, and women continued to experience severe societal discrimination. Abuse of children remained a problem. The Government limited workers' rights. Child labor, including instances of forced child labor, and trafficking in persons were problems. Mob violence triggered by anger over high levels of common crime resulted in mob executions of alleged criminals.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Arbitrary or Unlawful Deprivation of Life

There were no reports of political killings; however, police mistreatment of a suspect resulted in one death during the year.

On September 17, Peter Mussa Gama, who was arrested for suspected armed robbery, died from injuries inflicted during his detention at the Blantyre police station; an autopsy indicated that Mussa Gama died of strangulation and sustained burns and other injuries. The Malawian Human Rights Commission (MHRC) initiated an investigation, and the victim's family filed a civil suit against the police; both were ongoing at year's end.

There were no developments in the lawsuit filed by the family of a student demonstrator who was killed by police in 2001.

Mobs sometimes resorted to vigilante justice in beating, stoning, or burning suspected criminals to death. On October 27, a mob in Mulanje beat to death a man suspected of numerous armed robberies; police took no action against the perpetrators. Between January and March 2002, citizens in several communities killed more than 80 suspected thieves caught stealing maize.

No action was taken by police in any of the 2002 or 2001 cases of mob killings.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits such practices; however, police continued to beat and otherwise abuse detainees and to use excessive force in handling criminal suspects.

Police assaulted journalists during the year (see Section 2.a.).

Police violently dispersed demonstrations during the year, which resulted in numerous injuries (see Section 2.b.).

The Inspectorate of Prisons' 2002 report noted that police used unnecessary force, prison cells were overcrowded and unhygienic, and prisoners did not have access to food or water while in police custody. Police used beatings and assault to restrain prisoners and to force confessions. While higher-ranking officials demonstrated familiarity with new standards for the humane treatment of prisoners, their subordinates commonly employed unacceptable techniques. Police mistreatment of a suspect resulted in one death during the year (see Section 1.a.). Such conduct partly was due to the mistaken belief of many police officers that the law required them to present a case (not just charges) to the court within 48 hours of arrest, and police often resorted to beatings to obtain information within the time limit. Lack of financial resources for appropriate equipment, facilities, and training contributed to mistreatment.

Prison conditions remained harsh and life threatening. During the year, 90 inmates died in prison, mostly due to HIV/AIDS. Unlike in the previous year, there were no violent prison riots. Overcrowding, inadequate nutrition, substandard sanitation, and poor health facilities remained serious problems. The prison system, which was meant to accommodate 6,200 inmates, held 8,800 prisoners. Programs that provided community service alternatives for some offenders were utilized throughout the country. On July 6, the President pardoned 592 prisoners, 18 of whom were women with children or persons in ill health.

Although women were not kept in separate facilities, they were segregated within the prison compound and monitored by female guards. In the four maximum-security prisons, there were separate facilities for juveniles; however, the separation was inadequate in practice, and there were reports of sexual and physical abuse of juvenile prisoners. In the other prisons, juveniles were routinely incarcerated with adults. The law requires pretrial detainees to be held separately from convicted prisoners; however, many prisons could not comply with this law due to lack of space and inadequate facilities.

During the year, the Inspectorate of Prisons, domestic nongovernmental organizations (NGOs), and international NGOs were permitted to make visits to monitor prison conditions without government interference. The Prison Reform Committee also worked in collaboration with the Ministry of Home Affairs and the Inspectorate of Prisons to visit prisons.

On July 28, the U.N. Special Rapporteur on Prisons and Conditions of Detention in Africa visited and reported on conditions at Chirchiri Central Prison in Blantyre. NGOs reported good collaboration with prison authorities.

d. Arbitrary Arrest, Detention, or Exile

The Constitution provides the accused the rights to challenge the legality of detention, to have access to legal counsel, and to be released on bail or informed of charges by a court of law within 48 hours; however, these rights seldom were respected in practice.

The country's police force was inefficient, poorly trained, and inadequately funded. Corruption was widespread. Police continued efforts to improve investigative skills and to introduce the concept of victims' rights through workshops and other training exercises, particularly in the areas of sexual abuse and domestic violence (see Section 5). The Government continued to seek community involvement in its comprehensive reform of the police, and in May, the Inspectorate of Prisons launched an initiative for greater civil society and local participation in prison visits. During the year, civil society groups conducted workshops for the police on crowd control measures and management of demonstrations. The country also received foreign assistance during the year to train officials, procure equipment, and construct new police facilities.

Despite the constitutional requirement for police to charge a suspect within 48 hours of arrest, there were numerous reports that detainees were held for 2 weeks without being charged or having their statements taken. The use of temporary remand warrants was widespread and used to circumvent the 48-hour rule (see Section 1.c.). In cases where the court determined that a defendant could not afford to supply his own counsel, the Government provided legal services. However, since few persons were able to afford legal counsel, the country's seven public defenders could not represent all indigent detainees in a timely manner. Bail frequently was granted to reduce prison overcrowding, rather than on the merits of an individual's situation.

Police arrested some journalists and demonstrators during the year (see Sections 2.a. and 2.b.).

Unlike in the previous year, there were no reports that security forces arrested priests.

Police were accused of arbitrary arrests due to political motives and were routinely criticized for failing to act impartially with regard to political demonstrations.

Of the 8,800 persons incarcerated in the country's prisons, 2,385 were pretrial detainees; of the 354 juveniles held, 127 were pretrial detainees; and of the 81 women held, 36 were pretrial detainees.

The Constitution prohibits the use of forced exile, and the Government did not use it.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judicial system was inefficient and was handicapped by serious weaknesses, including poor record keeping, a shortage of attorneys and trained personnel, a heavy caseload, and a lack of resources. Unlike in the previous year, court operations were not affected by judicial strikes.

The Constitution provides for a High Court, a Supreme Court of Appeal, and subordinate magistrate courts. The Chief Justice is appointed by the President and confirmed by the National Assembly. The President appoints other justices, following a recommendation by the Judicial Service Commission. All justices are appointed until the age of 65 and may be removed only for reasons of incompetence or misbehavior, as determined by the President and a majority of the Parliament.

By law, defendants have the right to a public trial but not to a trial by jury; however, in murder cases, the High Court used juries of 12 persons from the defendant's home district. Defendants also are entitled to an attorney, the right to present and challenge evidence and witnesses, and the right of appeal. However, the judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants. During the year, the Department of Public Prosecutions had 7 prosecuting attorneys and 11 paralegals. The paralegals served as lay prosecutors and prosecuted minor cases in the magistrate courts. Lack of funding and a shortage of attorneys created a backlog, mainly in murder cases. In September 2002, with funding from donors, the Director of Public Prosecution stated that his office would prosecute 200 murder cases by December 2002; 103 cases were completed.

Juvenile offenders have special rights under the Constitution, including the right to be separated in custody from adults, to be treated in a manner that recognizes their age and the possibility for rehabilitation, and to be exempt from the punishment of life imprisonment without the possibility of release. However, these protections often were

denied in practice, and many juvenile offenders were incarcerated with adults (see Section 1.c.).

The Constitution provides for a National Compensation Tribunal (NCT) to adjudicate claims of criminal and civil liability against the former government. As of August, the NCT had registered more than 25,000 claims, of which 600 had been compensated fully and 7,000 had been awarded interim compensation payments. The NCT's original constitutional mandate did not permit the registration of new claimants after the December 2001 deadline; however, in 2002, the registration deadline was extended until July 13. The NCT's lack of funds limited its ability to settle claims.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, the Government at times infringed on these rights. Army and police forces, in carrying out sweeps for illegal weapons, did not always obtain search warrants as required by law.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice; however, there were some exceptions. Limited self-censorship existed.

A broad spectrum of political and ideological opinion was available in the country's two dozen newspapers and usually without government interference. Two independent newspapers, the Daily Times and the weekly Malawi News, also were available.

The state-owned Malawi Broadcasting Corporation (MBC) dominated the radio market with its two stations, transmitting in major population centers throughout the country. News coverage and editorial content clearly were pro-government. The investigation by the Office of the Ombudsman into the 2000 suspension of employees of MBC was ongoing at year's end.

There were 13 private radio stations, all broadcasting on FM frequencies with limited coverage and only in urban areas. There were two commercial stations broadcasting in Blantyre. There was a rural community radio station run by local women with the help of the Malawi Media Women's Association. Six religious stations broadcast in the capital and other major cities.

Government-owned Television Malawi was the country's sole television broadcaster.

On October 18, police assaulted several journalists who were taking photographs of an altercation between police and a motorist at a roadblock. The police, who reportedly initially permitted the photography, resorted to violence when a senior officer arrived on the scene. At year's end, no action had been taken against the responsible officers.

During the year, security forces arrested several journalists for publishing stories that could cause "public alarm." For example, in September, a Daily Times journalist was arrested for reporting that the President's nephew and son had been arrested for alleged involvement in burglaries. The reporter was released, and charges were dropped. Charges also were dropped against the journalist, printer, and four newspaper vendors who were arrested in 2001 for distributing an edition of the Dispatch newspaper; the newspaper, which stopped publishing after the arrests, resumed publishing during the year.

On July 7, several members of the Young Democrats, the youth wing of the UDF party, beat a photographer from The Nation newspaper for covering the UDF party convention in Blantyre. The UDF Deputy Regional Governor for Blantyre accused the newspaper of trying to disrupt the convention and warned that similar actions would be taken against journalists perceived to be anti-UDF who tried to attend the UDF party's second convention on August 8. On July 20, President Muluzi publicly announced that all journalists were welcome to cover the events of the convention, and there were no further attempts to exclude the media from the convention.

There were no developments in the formal inquiry into the 2002 assault on a journalist by a UDF parliamentarian.

On January 8, the Chairman of the Board of the Malawi Institute of Journalism ordered the school's student radio station to stop broadcasting political messages, news, or advertisements until the code of ethics and the broadcasting license could be reviewed; the station had broadcast the views of opposition parties. The Executive Director of the station refused to comply with the order, and the station continued to broadcast political news during the year. The Government took no action against the station.

On June 2, the Director General of the Malawi Communications Regulatory Authority (MACRA), an independent regulatory body, warned several community and religious radio stations to stop broadcasting political news and charged that the stations were "hijacking" the role of public broadcasters; however, no action was taken against the stations, which continued to broadcast throughout the year.

Unlike in the previous year, President Muluzi did not publicly criticize opposition newspapers during the year.

The MACRA issued broadcasting licenses for radio, television, and Internet service providers (ISP). There were three cellular telephone service providers and eight ISPs. The Government did not restrict access to the Internet; however, the Internet was not widely used.

The Government did not restrict academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly; however, there were instances in which police limited this right.

Unlike in the previous year, authorities did not overtly prohibit opposition parties from holding political rallies; however, some opposition rallies were cancelled (see Section 3).

On June 28 and 29, in Mangochi, police temporarily detained more than 12 demonstrators who were protesting the deportation of five al-Qa'ida members the previous week; the demonstrators had vandalized and looted 7 churches and the offices of an international NGO. On June 29, in Kasungu, police fired rubber bullets, tear gas, and live ammunition at other demonstrators protesting the same deportations; one person was hospitalized from gunshot wounds.

On November 8, police used tear gas and rifle butts to disperse a student demonstration at Malawi Polytechnic University; numerous students were injured. The students, who were protesting a change in government funding of the University, reportedly had blocked a presidential motorcade. No action was taken against the police.

No action was taken against UDF members who allegedly attacked Forum for the Defense of the Constitution demonstrators in 2002.

The Constitution provides for freedom of association, and the Government generally respected this right in practice. The Government required organizations, including political parties, to register with the Registrar General in the Ministry of Justice, and registration was granted routinely.

In July, the National Democratic Alliance (NDA) registered as a political party. In 2002, the Government threatened to ban the NDA unless it complied with registrations requirements.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

There were no separate requirements for the recognition of religions, but religious groups must register with the Government. There were no reports that the Government refused to register any religious group during the year.

Some opposition politicians and clerics have raised Islam as a political issue. Citing the President's adherence to Islam, his contact with Islamic countries such as Libya, Iran, and Sudan, and the building of new mosques, some opposition politicians and clerics accused the UDF of attempting to "Islamicize" the country.

Foreign Christian missionaries experienced occasional delays in renewing employment permits; however, this appeared to be the result of bureaucratic inefficiency rather than a deliberate government policy against foreign

missionaries. Missionaries and charitable workers paid lower fees for employment permits than did other professionals.

There were generally amicable relations between the various religious communities; however, following the deportation of five Muslim al-Qa'ida suspects, violent protests led to the targeting by Muslims of Christian interests, such as churches and NGOs (see Section 2.b.).

For a more detailed discussion, see the [2003 International Religious Freedom Report](#).

d. Freedom of Movement within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government generally respected them in practice.

The law provides for the granting of refugee status or asylum to persons who meet the definition in the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. In practice, the Government provided protection against refoulement and granted refugee status or asylum; however, there were long delays in the process. The Government cooperated with the office of the U.N. High Commissioner for Refugees (UNHCR) in assisting refugees. According to the UNHCR, the country hosted 9,078 refugees, primarily from the Democratic Republic of the Congo, Rwanda, and Burundi, at a refugee center in Dowa. The majority of refugees resided at the Dzaleka camp, and the UNHCR estimated that approximately 200 new refugees arrived each month. In October, the Government, in conjunction with the UNHCR, opened a second refugee camp in Luwanti to relieve overcrowding in Dzaleka. The law does not accept refugees for permanent resettlement and does not permit them to work or study; however, while no legal framework existed, the Government allowed refugees to seek both employment and educational opportunities. The UNHCR, NGOs, and the Government collaborated to provide children in refugee camps with access to education.

The Government granted hearings for individuals to establish asylum status; however, the Government denied asylum to many of the Rwandans and Congolese who either had requested asylum in another country or had the opportunity to do so.

The country also provided temporary protection to certain individuals who fall outside of the definition of the 1951 U.N. Convention Related to the Status of Refugees or its 1967 Protocol.

On November 5, the Government signed an agreement with the Government of Rwanda and the UNHCR to repatriate approximately 5,500 refugees who fled following the 1994 genocide in Rwanda; repatriations would be voluntary, according to the UNHCR. The agreement had not been implemented by year's end.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage for citizens 18 years of age and older. International election observers found the 1999 presidential and parliamentary elections to be free and substantially fair; however, the electoral process was flawed, as opposition access to the broadcast media was limited; there were voter registration problems in some areas of the country; and the Electoral Commission at times displayed bias in favor of the ruling party. President Muluzi was reelected to serve a second 5-year term, defeating Gwanda Chakuamba, the joint presidential candidate of the two leading opposition parties, the MCP and AFORD. There was no clear-cut ideological difference among the three political parties. The opposition challenged the outcome of the presidential vote, and in 2000, the Supreme Court of Appeal upheld the High Court ruling in favor of the President.

President Muluzi, First Vice President Justin Malewezi, and a 46-member cabinet exercise executive authority. During the year, Chakufwa Chihana, a member of AFORD who had previously resigned as Second Vice President citing alleged corruption in the Government, again accepted the second vice-presidency, which is reserved for a member of an opposition political party and had been vacant since 1996. The executive exerted considerable influence over the legislature; the legislature followed a hybrid parliamentary system, and consequently a number of Cabinet ministers also were Members of Parliament (M.P.s).

Local government elections to select councilors and mayors, as mandated under the law, were held in 2000 and were conducted in an open and transparent manner according to local and international observers; however, they were marked by low voter turnout, allegations of voter and candidate intimidation, and unequal access to the

media. The ruling UDF party won more than 70 percent of the seats; opposition parties and some NGOs criticized the Government for manipulating the process.

Although the Government did not prevent the operation of opposition political parties, the parties continued to allege that the Government used bribery and other inducements, including violence, to encourage opposition party divisions and defections of key personnel to the ruling party. In 2002, the Anti-Corruption Bureau began investigations of some opposition M.P.s who allegedly were bribed to vote in favor of the constitutional amendment bill to abolish presidential term limits. The investigations were ongoing at year's end; however, no indictments had been made against any political figures.

Unlike in the previous year, authorities did not overtly prohibit opposition parties from holding political rallies; however, some opposition rallies had to be cancelled when organizers discovered at the last minute that the ruling party had decided to hold its own demonstration at the same venue on the same date. On occasion, members of the Young Democrats also disrupted opposition political rallies.

During the year, rival political parties and candidates resorted to violence and vandalism, which resulted in minor injuries.

There were no laws that restricted the participation of women or ethnic minorities in the political process. There were 16 women in the 193-seat National Assembly, and there were 8 women in the 38-member Cabinet. Women comprised approximately 25 percent of the civil service. There were 2 women justices among the 22 Supreme and High Court justices.

A citizen of European origin, several citizens of mixed ethnicity, and one citizen of Asian origin were members of the National Assembly.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups operated without government restriction, training civic educators, advocating changes to existing laws and cultural practices, and investigating and publishing their findings on human rights cases. Government officials generally were cooperative and responsive to their views.

The Ombudsman was mandated by the Constitution to investigate and take legal action against government officials responsible for human rights violations and other abuses. The Ombudsman's freedom of action was circumscribed by legislation that requires a warrant and a 3-day waiting period to gain access to certain government records. The activities of the Ombudsman are subject to judicial review.

The constitutionally mandated MHRC was charged to monitor, audit, and promote human rights provided for under the Constitution, and to carry out investigations regarding violations of any human rights. Despite limited resources, in 2001, the MHRC issued its 2001-02 Human Rights Report, which described numerous complaints of human rights violations, such as overcrowding and poor sanitation in prisons, lack of proper medical attention to sick prisoners, long periods of pretrial detention, police brutality, child abuse, domestic violence, and the lack of opposition access to the media during elections.

Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status

The Constitution specifically provides for equal rights for women, forbids discrimination based on language or culture, and provides for equality and recognition before the law for every citizen; however, in practice, the capacity of government institutions to assure equal rights for all citizens was limited.

Societal discrimination against persons living with HIV/AIDS was widespread and inhibited access to treatment; many individuals preferred to keep silent about their health rather than to seek help and risk being ostracized. The Ministry of Labor and Vocational Training introduced a public relations program to reduce the stigma associated with having HIV/AIDS.

Women

Domestic violence, especially wife beating, was common, and women seldom discussed the problem openly; however, the press published frequent accounts of rape and abuse, and the judiciary continued to impose heavier

penalties on those convicted of rape. A confidential shelter for women in Lilongwe who were victims of physical or sexual abuse housed 57 women and 9 children between January and July. Police did not normally intervene in domestic disputes.

The law does not specifically prohibit female genital mutilation (FGM), and there was anecdotal evidence that a few small ethnic groups practiced it.

Trafficking in women and girls was a problem (see Section 6.f.).

Under the Constitution, women have the right to full and equal protection by law and may not be discriminated against on the basis of gender or marital status; however, in practice, discrimination against women was pervasive, and women did not have opportunities equal to those available to men. Women had significantly lower levels of literacy, education, formal and nontraditional employment opportunities, and access to resources to increase agricultural productivity. The literacy rate among women between the ages of 15 and 45 was less than 50 percent; male literacy in the same age group was approximately 76 percent.

Women often had less access to legal and financial assistance, and wives often were victims of discriminatory inheritance practices in which the majority of the estate was taken unlawfully by the deceased husband's family. Women usually were at a disadvantage in marriage, family, and property rights; however, awareness of women's legal rights has increased, and women began to speak out against abuse and discrimination. Households headed by women were represented disproportionately in the lowest quarter of income distribution; 52 percent of the country's full-time farmers were women. Typically women worked more hours than men to complete the same farm tasks because they rarely had comparable tools and equipment, and they remained responsible for all household tasks. Women also had limited access to agricultural extension services, training, and credit. Gender training for agricultural extension workers and the gradual introduction of rural credit programs for women have increased; however, few women participated in the limited formal labor market, where they constituted less than 5 percent of managerial and administrative staff.

The law provides for a minimum level of child support, widows' rights, and the right to maternity leave; however, only individuals who utilized the formal legal system benefited from these legal protections.

The Government addressed women's concerns through the Ministry of Gender and Community Services.

Children

The Constitution provides for equal treatment of children under the law, and during the year, the Government continued a high level of spending on children's health and welfare. The Government provided primary education for all children, although education was not compulsory; however, families were responsible for tuition, book fees, and purchasing uniforms. Students from very poor families had access to a public book fund. Girls, especially in rural areas, historically have been unable to complete even a primary education and therefore were at a serious disadvantage in finding employment. The 2002 Malawi Demographic Household and Education Data Survey's report indicated that gender gaps in primary school attendance were small but that boys were much more likely to attend secondary school than girls. There also were large gaps in achievement levels between girls and boys.

More than half of the country's children lived in poverty, mostly in rural areas. Children in rural households headed by women were among the poorest. Only one-third of children had easy access to safe drinking water, infant mortality was high, and child malnutrition was a serious problem. A few charitable organizations attempted to reduce the number of child beggars in urban areas; however, the problem of street children worsened as the number of orphans whose parents died from HIV/AIDS increased. Extended family members normally cared for such children and other orphans.

There were societal patterns of abuse of children. Kupimbira, a societal practice that allows a poor family to take out a loan for cattle or money in exchange for their daughter, regardless of age, has re-emerged over the last 2 years, according to press reports. The media also reported on the sexual abuse of children, especially in relation to traditional practices of initiation. While rites to initiate girls into their future adult roles still were secret, information suggested that abusive practices were widespread and very damaging.

FGM was performed in some cases on girls (see Section 5, Women).

The trafficking of children for sexual purposes was a problem (see Section 6.f.).

Although the age of sexual consent is 14, there was no age specified for the protection of minors from sexual exploitation, child prostitution, or child pornography. The belief that children were unlikely to be HIV positive and the widespread belief that sexual intercourse with virgins can cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the sexual exploitation of minors.

Child labor, including instances of forced child labor, was a problem (see Section 6.d.). Child prostitution occurred, but it was not considered a significant problem.

During the year, UNICEF funded the country's first birth registration program, which provides children with access to education, health care, and other basic services; the program is also expected to provide protection from discriminatory inheritance practices.

Persons with Disabilities

The Constitution provides for the support of persons with disabilities through greater access to public places, fair opportunities in employment, and full participation in all spheres of society; however, the Government has not mandated accessibility to buildings and services for persons with disabilities. There were both public and privately supported schools and training centers, which assisted persons with disabilities. There also were several self-supporting businesses run by and for persons with disabilities. The Minister of State responsible for persons with disabilities was a cabinet-level position, which was held by a person with disabilities.

Section 6 Worker Rights

a. The Right of Association

Workers have the legal right to form and join trade unions; however, union membership was low due to the small percentage of the work force in the formal sector, the lack of awareness of worker rights and benefits, and a resistance on the part of many employees to join unions. Army personnel and police could not belong to trade unions, but other civil servants were allowed to form unions. Union leaders estimated that 12 percent of the formal sector workforce belonged to unions; however, accurate statistics on the numbers of union members were not available. Employers, labor unions, and the Government lacked sufficient knowledge of their legitimate roles in labor relations and disputes, which limited their effectiveness in the implementation and enforcement of the law; however, the International Confederation of Free Trade Unions (ICFTU) charged that trade union rights were also limited by the resistance of some employers, including the Government, to respect these rights.

Unions must register with the Registrar of Trade Unions and Employers' Organizations in the Ministry of Labor and Vocational Training (MOLVT), and registration was routinely granted. At year's end, 26 unions were registered. Unions were independent of the Government, parties, and other political forces.

The law prohibits anti-union discrimination by employers and requires that employers reinstate workers dismissed because of union activities. The ICFTU's 2002 Annual Survey stated that district education officers were fired for their membership in the Teachers' Union of Malawi; however, the Registrar of Trade Unions and Employers' Organizations denied that such dismissals occurred.

Unions may form or join federations and have the right to affiliate with and participate in international workers' organizations with the permission of the Government; there were several such affiliations. There were no restrictions on the number of union federations. There were two federations in the country: The Malawi Congress of Trade Unions (MCTU), with 19 affiliates; and the Congress of Malawi Trade Unions (COMATU), with 3 affiliates.

b. The Right to Organize and Bargain Collectively

Unions have the right to organize and bargain collectively. The law requires that at least 20 percent of employees (excluding senior managerial staff) belong to a union before such a union can engage in collective bargaining at the enterprise level and at least 15 percent union membership for collective bargaining at the sector level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions included wage negotiation, dispute resolution, and industry-specific labor policy development. The law was not implemented effectively in practice due to the lack of sufficient knowledge of the law by employers, trade unions, and government officials (see Section 6.a.). In 2001, the National Bank of Malawi unilaterally abrogated an agreement with the Commercial, Industrial and Allied Workers' Union; however, there were no reports of such abrogations during the year. Collective agreements were binding legally, and both

parties must deposit them with the Registrar of Trade Unions.

The law allows members of a registered union to strike or go through a formal mediation process overseen by the MOLVT. A strike can only occur after all settlement procedures established in a collective agreement (an understanding, not necessarily signed, reached by both parties to attempt mediation) and conciliation efforts have failed. The law requires a notice in writing to the employer and the MOLVT at least 7 days before a strike. The law also forbids the temporary replacement of labor and allows peaceful picketing during strikes. The law provides similar procedures for lockouts. Laws do not prohibit specifically retaliation against strikers. There was no prohibition on actions against unions that were not registered legally. Members of a registered union in "essential services" only have a limited right to strike. Essential services were specified as services whose interruption would endanger the life, health, or personal safety of the whole or part of the population; they were determined by the Industrial Relations Court (IRC) upon application by the Minister of Labor.

Arbitration rulings were legally enforceable; however, in practice, due to the lack of funding and 2-year case backlog, the IRC could not monitor cases and enforce the laws adequately. The IRC also ran complaint centers throughout the country to facilitate access to its services.

During the year, there were some small strikes that were resolved quickly and without violence.

In August 2002, judiciary support staff held a general strike to demand salary and benefits increases approved by Parliament in 2000; during the year, the Treasury agreed to meet all their demands.

At year's end, 14 firms held licenses to operate under export processing zone (EPZ) status, and all were operational. The full range of labor regulations applied to the EPZs; however, union organizers said they had little access to workers in the EPZs. The ICFTU survey noted that companies in the EPZs were also resistant to union activity.

c. Prohibition of Forced or Bonded Labor

The Constitution prohibits forced or bonded labor, including by children; however, there were reports that it occurred (see Sections 6.d. and 6.f.). According to the ICFTU, bonded labor involving entire families was widespread on tobacco plantations. Tobacco tenants have exclusive arrangements, often unwritten with the estate owners to sell their crop and to buy inputs such as fertilizer, seed, and often food. These costs, in addition to rent charges, often were greater than the artificially low price received for the tobacco crop, leading to a situation of debt and bonded labor to repay the input and other costs.

d. Status of Child Labor Practices and Minimum Age for Employment

Child labor was a problem. The Constitution defines children as persons under 16 years of age, and the law prohibits the employment of persons less than 14 years of age. It also prohibits the employment of children less than 18 years of age in work that was hazardous, harmful, or interferes with their education. There was significant child labor on tobacco and tea farms, subsistence farms, and in domestic service, largely as a result of extreme poverty and longstanding cultural traditions. One local NGO reported that in urban areas, it was common to find young girls working outside of their family as domestic servants, receiving little or no wages, and living in a state of indentured servitude. School-aged children often worked as vendors. There was no special legal restriction on children's work hours.

Budgetary constraints largely precluded minimum work age and child labor law enforcement by police and MOLVT inspectors.

The results of a May 2002 MOLVT study on child labor in the country were not released by year's end.

e. Acceptable Conditions of Work

The MOLVT set separate urban and rural minimum wage rates based on recommendations of the Tripartite Wage Advisory Board (TWAB) composed of representatives of labor, government, and the private sector. However, the TWAB encountered problems due to inefficient organizational structure and inadequate funding, which hindered timely and accurate revision of the wage rate recommendations. The urban minimum wage amounted to approximately \$0.52 (MK 56) per day; in all other areas, it was approximately \$0.37 (MK 40) per day. Minimum wage rates did not provide a family with a decent standard of living. Wage earners tended to supplement their

incomes through farming activities. The MOLVT lacked the resources to enforce the minimum wage effectively. However, the minimum wage largely was irrelevant for the great majority of citizens, who earned their livelihood outside the formal wage sector.

The maximum legal workweek was 48 hours, with a mandatory weekly 24-hour rest period. The laws require payment for overtime work and prohibit compulsory overtime. In practice, employers frequently violated statutory time restrictions.

The law includes extensive occupational health and safety standards; however, MOLVT enforcement of these standards was erratic. Workers--particularly in industrial jobs--often worked without basic safety clothing and equipment. Workers dismissed for filing complaints about workplace conditions have the right to file a complaint at the labor office or sue the employer for wrongful dismissal. Workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment; however, given the low level of education of most workers and the high level of unemployment, workers were unlikely to exercise this right.

Mechanisms for protecting internationally recognized worker rights were weak. There were serious manpower shortages at the Ministry of Labor; as a result, there were almost no labor standards inspections.

On January 6, 11 workers at Sacha's Bakery in Blantyre were trapped inside when the building caught fire. The employees, who routinely were locked inside the building to prevent theft, were unable to escape; they also were unable to call for help because the telephones had been locked away to prevent employee abuse. After 30 minutes, trapped employees escaped unharmed when guards broke down the doors. Because the fire closed the bakery, the employees were fired. A subsequent investigation by the Occupational Health and Safety Department (OHSD) revealed that the bakery had not been inspected since 1998 and that the fire resulted from uninsulated electrical wiring. The OHSD admitted it was partially to blame for failing to carry out its duties; on May 14, the bakery owners were found in violation of four labor laws and fined.

The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.

According to the Government's policy statements and new guidelines for the issuance and renewal of employment permits (the temporary employment permit or "TEP"), foreign investors may employ foreign personnel in areas where there was a shortage of "suitable and qualified" citizens. The guidelines also mandate that processing times for TEP applications shall not exceed 40 working days; however, there were reports of delays.

f. Trafficking in Persons

The law does not prohibit trafficking in persons specifically, and trafficking was a problem. The Penal Code contains several provisions relating to prostitution and indecency that could be used to prosecute traffickers. Since 2001, seven cases involving trafficking in persons have been prosecuted; however, there were no arrests or prosecutions of suspected traffickers during the year.

No action was taken during the year on a bill introduced in the National Assembly that would criminalize trafficking.

The country is a source country for women and children trafficked for sexual purposes locally and to brothels in Europe and South Africa. According to a 2003 report by the International Organization for Migration (IOM), boys and girls were recruited by sex tourists visiting the country who promised the victims employment and educational opportunities in Europe. Victims trafficked to Europe were typically between 15- and 26-years-old, and were recruited from Lilongwe with offers of jobs in fashion, sales, factories, hotels, and restaurants. In recent years, girls from the country have been found stranded in European brothels with no means to return home. Victims trafficked to South Africa were typically between 14- and 24-years-old, and were recruited with offers of marriage, study, or employment in South Africa.

Sex tourists, primarily from Germany, the Netherlands, and the United Kingdom, lured children into sexual relationships with them while in the country, according to the IOM. Poverty and low educational levels contributed to such exploitation. Traffickers for the European sex trade generally were local businessmen with links to Nigerian criminal syndicates in Europe. Traffickers involved in land border trafficking to South Africa were typically long-distance truck drivers and local businesswomen.

The extent of the trafficking problem was undocumented. Those cases that arose to the attention of authorities were handled by the police and the Ministry of Gender and Community Services.

There was no government funding for NGO services to victims of trafficking, and there was no training for government officials on how to provide assistance to trafficking victims.